



PATENT
Customer No. 22,852
Attorney Docket No. 07579.0001-00000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
)
Graham Edmund KELLY) Group Art Unit: 1623
)
Application No.: 09/602,191) Examiner: Patrick T. Lewis
)
Filed: June 22, 2000)
)
For: HEALTH SUPPLEMENTS)
CONTAINING PHYTO-)
OESTROGENS, ANALOGUES OR)
METABOLITES THEREOF)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
MAIL STOP RCE

Sir:

UPDATED NOTICE REGARDING RELATED LITIGATION

Applicant hereby submits this Updated Notice to inform the Office of the current status of the Solae I and Solae II litigations. The present application, Serial No. 09/602,191, is a reissue application of U.S. Patent No. 5,830,887, filed as U.S. Application Serial No. 08/338,567, filed as PCT/AU93/00230 on May 19, 1993, which entered the national stage on January 12, 1995. Application Serial Nos. 09/602,191 and 08/338,567 are assigned to Novogen Pty. Ltd. ("Novogen").

Applicant previously submitted a Notice Regarding Related Litigation informing the Office that on June 3, 2003, Solae, L.L.C. ("Solae") filed a Complaint alleging that Archer Daniels Midland Company ("ADM") and Amerifit Nutrition, Inc. ("Amerifit") infringe at least one claim of U.S. Patent No. 6,562,380 ("the '380 patent.") The case, Civil Case No. 4:03-CV-

00732-HEA, was filed in U.S. District Court for the Eastern District of Missouri (“Solae I”).

The ‘380 patent issued from U.S. application Serial No. 08/910,837 on May 13, 2003, and was originally filed on August 13, 1997, as a continuation of U.S. Application Serial No. 08/338,567, filed January 12, 1995, now U.S. Patent No. 5,830,887.

Applicant also informed the Office that on November 4, 2003, Solae, L.L.C. (“Solae”) filed a separate Complaint alleging that Archer Daniels Midland Company (“ADM”) and Amerifit Nutrition, Inc. (“Amerifit”) infringe at least one claim of the U.S. Patent No. 6,642,212 B1 (“the ‘212 patent.”) The case, Civil Case No. 4:03-CV-01595 RWS, was filed in U.S. District Court for the Eastern District of Missouri (“Solae II”). The ‘212 patent issued from U.S. application Serial No. 09/421,069 on November 4, 2003, and was originally filed on October 19, 1999, as a continuation of U.S. application Serial No. 08/910,837, filed August 13, 1997, now U.S. Patent No. 6,562,380 B1.

SOLAE I

We highlight the following events in the Solae I litigation, which have occurred since December 23, 2003, the date of our previous Notice. On March 11, 2004, the Court issued a Memorandum and Order denying defendants ADM and Amerifit’s Motions to Dismiss for Lack of Standing and Failure to Join an Indispensable Party. On March 18, 2004, Defendants ADM and Amerifit filed a Motion for Reconsideration of this order.

On April 1, 2004, defendants ADM and Amerifit both filed Answers and Counter Claims to Plaintiff’s Complaint. In these Answers ADM and Amerifit denied the allegations, contained in Solae’s complaint. ADM and Amerifit asserted the affirmative defenses of invalidity and non-infringement of the ‘380 and the ‘212 patents. ADM and Amerifit also presented counter-claims asking to declare the ‘380 and the ‘212 patents invalid and non-infringed.

Further to this Notice, the Applicant attaches: the Memorandum and Order Denying ADM's Motion To Dismiss For Lack Of Standing And Failure To Join An Indispensable Party; Defendants Archer Daniels Midland Company And Amerifit Nutrition, Inc.'s Motion For Reconsideration; Defendant, Amerifit Nutrition, Inc.'s Answer and Counter Claims to Plaintiff's Complaint; Defendant, Archer Daniels Midland Company's Answer And Counter Claims to Plaintiff's Complaint; and the docket for this case, current as of April 5, 2004.

SOLAE II

We highlight the following events in the Solae II litigation, which have occurred since December 23, 2003, the date of our previous Notice. On January 29, 2004, plaintiff Solae filed a Second Supplemental Complaint alleging that ADM and Amerifit infringe at least one claim of the '212 Patent. In this Complaint Solae also alleges that defendants infringe at least one claim of U.S. Patent No. 6,664,382 ("the '382 patent") and U.S. Patent No. 6,680,381 ("the '381 patent").

On April 1, 2004, defendants ADM and Amerifit both filed Answers and Counter Claims to Plaintiff's Second Supplemental Complaint. In these Answers ADM and Amerifit denied the allegations contained in Solae's second supplemental complaint. ADM and Amerifit asserted the affirmative defenses of invalidity and non-infringement of the '212 patent, the '382 patent and the '381 patent. ADM and Amerifit also presented counter-claims asking to declare the '212 patent, the '382 patent, and the '381 patent invalid and non-infringed.

Further to this Notice, the Applicant attaches Plaintiff Solae, LLC's Second Supplemental Complaint; Defendant, Amerifit Nutrition, Inc.'s Answer And Counter Claims to Plaintiff's Second Supplemental Complaint; Defendant Archer Daniels Midland Company's

Answer and Counter Claims to Plaintiff's Second Supplemental Complaint; and the docket for this case, current as of April 5, 2004.

REMARKS

If there is any fee due in connection with the filing of this Statement, please charge the fee to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: April 15, 2004

By: Deborah J. Acker
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